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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Frank Puglia,)	Case No.
)	
Plaintiff,)	COMPLAINT AND DEMAND FOR
)	JURY TRIAL
vs.)	
)	
Thor Industries, Inc. and Paul Evert's RV)	
Country, Inc.,)	
)	
<u>Defendants.</u>)	

NATURE OF ACTION

1. Plaintiff Frank Puglia ("Plaintiff") brings this action against Defendants Thor Industries, Inc. ("Thor") and Paul Evert's RV Country, Inc. ("Paul Evert's RV") (collectively, "Defendants") under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* and A.R.S. § 47-2608.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

3. Jurisdiction is also conferred at 15 U.S.C. § 2310(d) as the amount in controversy exceeds fifty thousand dollars (\$50,000.00).

FACTUAL ALLEGATIONS

11. On November 21, 2014, Plaintiff purchased the Motor Home from Paul Evert's RV.

12. The Motor Home's total sales price was \$158,184.84.

13. In connection with Plaintiff's purchase of the Motor Home, Thor issued a written warranty.

14. Since Plaintiff took possession of the Motor Home, Plaintiff has experienced various defects and non-conformities in the Motor Home that diminish its value and substantially impair Plaintiff's use of the Motor Home.

15. In December 2014, Plaintiff brought the Motor Home to Camping World RV Sales, which is a Thor authorized agent, in order to receive warranty service for the following issues:

- a) Wall separating from floor;
- b) Sub-floor separated in basement;
- c) Bunk above driver seating falls;
- d) Defective microwave;
- e) Defective bathroom door;
- f) Dented refrigerator from defective bathroom door;
- g) Defective generator;
- h) Persistent knocking in bathroom wall;
- i) Defective entry door;
- j) Defective drawer catches;
- k) Defective slider track in compartment near entry door;
- l) Defective sound bar/sound system; and,
- m) Defective antenna crank.

16. Plaintiff was unable to use the Motor Home for 23 days while Camping World RV Sales attempted to repair the above issues under the written warranty issued by

1 Thor.

2 17. Many of the above issues persisted after even after the Motor Home was
3 returned to Plaintiff.
4

5 18. In January 2015, Plaintiff brought the Motor Home back to Paul Evert's
6 RV to fix the uncured non-conformities and additional non-conformities which were
7 either discovered or arose thereafter, including, but not limited to:
8

- 9 a) Defective slide out;
- 10 b) Defective trim around entry door;
- 11 c) Compartment shelving not level or mounted properly;
- 12 d) Defective compartment doors;
- 13 e) Defective passenger side bedroom window;
- 14 f) Defective shade near passenger side couch;
- 15 g) Defective sound bar/sound system;
- 16 h) Defective generator;
- 17 i) Defective bathroom door;
- 18 j) Driver side front fender leak and/or persistent fluid leak;
- 19 k) Defective thermostat;
- 20 l) Defective microwave;
- 21 m) Defective step well cubby;
- 22 n) Defective outer wall;
- 23 o) Defective passenger side compartment panel; and,
- 24 p) Defective bathroom heater.

25 19. Since January 2015, the Motor Home has remained at Paul Evert's RV,
26 who has purportedly been attempting to repair the above issues under the written
27 warranty issued by Thor.
28

20. On April 2, 2015, Plaintiff inspected the Motor Home at Paul Evert's RV to
confirm that the non-conformities had been fixed under warranty.

21. Upon inspection, Plaintiff discovered that very few of the non-conformities

1 had been fixed in the three months the Motor Home had been at Paul Evert's RV.

2 22. Accordingly, Paul Evert's RV is unable or unwilling to fix the issues,
3
4 despite having been given ample opportunity to do so.

5 23. For some of the Motor Home's aforementioned non-conformities which
6
7 have gone uncured, Plaintiff was aware of their existence at the time he accepted delivery
8
9 of the Motor Home, but Plaintiff was assured by Paul Evert's RV and reasonably
10
11 assumed that the non-conformities would be timely cured.

12 24. Upon information and belief, some of the Motor Home's other non-
13
14 conformities went undiscovered by Plaintiff at the time he accepted delivery of the Motor
15
16 Home because it was difficult or impossible to discover the non-conformities at the time
17
18 of acceptance.

19 25. The Motor Home still has significant material defects and non-conformities
20
21 as of the date of the filing of this complaint.

22 26. Plaintiff provided Thor, through its authorized repair network, a reasonable
23
24 opportunity to repair the defects, non-conformities and conditions within the Motor
25
26 Home and its components.

27 27. Despite being given more than a reasonable number of opportunities to cure
28
29 said defects, non-conformities and conditions, Thor failed to do so.

30 28. Thor's warranty therefore failed in its essential purpose.

31 29. Thor's failure to correct said defects violates Thor's statutory and common
32
33 law duties to Plaintiff and the expectations created in its promotional documents and
34
35 written warranty documents.

do so.

WHEREFORE, pursuant to 15 U.S.C. § 2310(d), Plaintiff prays for relief and judgment against Thor, as follows:

- a) Adjudging that Thor breached the warranty;
- b) Returning to Plaintiff all monies Plaintiff paid toward the Motor Home;
- c) Awarding diminution in value damages;
- d) Awarding Plaintiff damages, pursuant to 15 U.S.C. § 2310(d);
- e) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- f) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- g) Awarding such other and further relief as the Court may deem just and proper.

**COUNT II
REVOCATION OF ACCEPTANCE
PAUL EVERT'S RV**

38. Plaintiff repeats and re-alleges each and every factual allegation above.

39. Paul Evert's RV's tender of the Motor Home was substantially impaired to Plaintiff due to its own defects and non-conformities.

40. Plaintiff's acceptance of the Motor Home was reasonably induced by the difficulty of discovery of the Motor Home's nonconformity and Paul Evert's RV's assurances. However, Paul Evert's RV has failed to seasonably cure the nonconformity

1 since Plaintiff's discovery.

2 41. Plaintiff has revoked acceptance of the Motor Home within a reasonable
3 time after discovering the grounds for revocation and before any substantial change in
4 condition of the Motor Home which was not caused by its own defects.
5

6 42. Plaintiff has notified Paul Evert's RV of his revocation.
7

8 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 9 a) Adjudging that Paul Evert's RV failed to accept Plaintiff's
10 revocation of acceptance;
11
12 b) Allowing Plaintiff to revoke acceptance of the Motor Home;
13
14 c) Returning to Plaintiff all monies Plaintiff paid toward the Motor
15 Home;
16
17 d) Awarding Plaintiff damages, pursuant to A.R.S. § 47-2711;
18
19 e) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
20 this action, pursuant to A.R.S. § 12-341.01;
21
22 f) Awarding Plaintiff any pre-judgment and post-judgment interest as
23 may be allowed under the law;
24
25 g) Awarding such other and further relief as the Court may deem just
26 and proper.
27
28

TRIAL BY JURY

45. Plaintiff is entitled to and hereby demands a trial by jury.

1
2 Dated: April 23, 2015.

Respectfully submitted,

3
4 /s/ Russell S. Thompson, IV
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28 Attorneys for Plaintiff